

FILED
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District Court

SEP - 8 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Law Office of G. Anthony Long
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Telephone No. (670) 235-4802
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Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA) CRIMINAL ACTION NO. 05-0027
)
Plaintiff)
) DEFENDANT'S MEMORANDUM
v.) SUPPORTING MOTION TO
) COMPEL DISCOVERY
ZHENG MING YAN)
) Date: Oct. 6, 2005
Defendant) Time: 9:00 a.m.
_____)

FRCrP Rule 16 allows Zheng to discover 1) all written and recorded statements she made, 2) the substance of all oral statements which the government intends to offer as evidence at trial, 3) a copy of the defendant's prior criminal record, 4) all books, papers, documents, photographs, tangible objects, buildings or places which are material to the preparation of the defense or are intended for use by the government at trial or were obtained from or belong to the defendant, and 5) the results or reports of physical examinations, and scientific tests or

1 experiments which are material to the preparation of the defense or which the
2 government intends to use as evidence at trial. Although Zheng has requested
3 discovery, *See* Attachment A, the prosecution has not provided any discovery.
4 Zheng is entitled to under Rule 16. Accordingly, Zheng requests discovery of the
5 following under FRCrP Rule 16:
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- 7 1. The substance of each and every oral statement made by
8 Zheng prior to, contemporaneous with, and subsequent to
9 her arrest.
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- 11 2. The identity of each and every informant who provided
12 information to governmental officials or agents concerning
13 the charge against Zheng.
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- 15 3. The identity of each and every person who witnessed the
16 alleged acts or actions of Zheng which serve as a basis for
17 the charge against Zheng.
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- 19 4. Any and all documents which are material to the preparation
20 of Zheng's defense or are intended for use by the
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1 government as evidence in its case in chief at the trial, or
2 were obtained from or belong to Zheng or any other
3 defendant, co-conspirator, witness or person which relates to
4 any of the charges against Zheng.
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7 5. A copy of any and all statements made by any and all co-
8 conspirators.
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11 6. A copy of the documentation reflecting the chain of custody
12 of any and all physical evidence to be used against Zheng at
13 trial.
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17 7. A copy of any and all written statements taken by
18 government agents obtained from persons whom the
19 government intends to call as witnesses at trial.
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23 8. A copy of each and every criminal conviction of each and
24 every person the government intends to call as a witness at
25 trial.
26

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- 1
- 2 9. A copy of Zheng's prior criminal record.
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- 5 10. A copy of each and every written or recorded statement
- 6 made by Zheng which is related to this case.
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- 8
- 9 11. A copy of all original or rough hand written notes taken or
- 10 made by governmental officials or agents based upon
- 11 interviews with each and every person the government
- 12 interviewed in investigating the case which led to the
- 13 indictment against Zheng.
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- 17 12. The identity of each and every alleged co-conspirator of
- 18 Zheng.
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- 21 13. A copy of the personnel file of each and every employee and
- 22 agent of the United States of America that the government
- 23 intends to call as a witness at trial.
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1 14. A copy of the personnel file of each and every employee and
2 agent of the CNMI that the government intends to call as a
3 witness at trial.
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7 15. The identify of each and every expert witness the
8 prosecution intends to call as a witness at trial.
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11 16. A summary of the testimony of each expert witness the
12 government intends to call at trial under FRE Rules 702, 703
13 and 705, which summary shall describe the witnesses'
14 opinions, the bases and the reasons for those opinions, and
15 the witnesses' qualifications.
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20 17 Inspection of any and all physical items which are material
21 to the preparation of Zheng's defense or are intended for use
22 by the government as evidence in its case in chief at the trial,
23 or were obtained from or belong to Zheng or any other
24 defendant, co-conspirator, witness or person which relates to
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any of the charges against Zheng.

18. A copy of each and every photograph or electronic image which is material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness, or person which relates to any of the charges against Zheng.

19. A copy of any and all video recordings which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness, or person which relates to any of the charges against Zheng.

20. A copy of any and all tape recordings which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its

1 case in chief at the trial, or were obtained from or
2 belong to Zheng or any other Defendant, co-
3 conspirator, witness, or person which relates to any of the
4 charges against Zheng.
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7 21. A copy of any and all transcripts of tape recordings which
8 are material to the preparation of Zheng's defense or are
9 intended for use by the government as evidence in its case in
10 chief at the trial, or were obtained from or belong to Zheng
11 or any other defendant, co-conspirator, witness, or person
12 which relates to any of the charges against Zheng.
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17 **II. ZHENG IS ENTITLED TO RULE 12(b)(4)(B) NOTICE**
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19 Rule 12(b)(4)(B) provides as follows:

20 At the arraignment or as soon afterward as practicable, the
21 defendant may, in order to have an opportunity to move to suppress
22 evidence under Rule 12(b)(3)(C), request notice of the
23 government's intent to use (in its evidence-in-chief at trial) any
24 evidence that the defendant may be entitled to discover under Rule
25 16.

26 Zheng requests the Rule 12(b)(4)(B) notice.
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III. ZHENG IS ENTITLED TO FRE RULE 404(b) DISCOVERY

FRE 404(b) provides that the prosecution, in a criminal case, shall provide reasonable notice in advance of trial of the general nature of any prior bad acts it intends to introduce at trial. The prosecution should provide Zheng with pretrial disclosure of each prior bad act it intends to introduce at trial.

IV. ZHENG IS ENTITLED TO PRODUCTION OF EXCULPATORY MATERIAL

The prosecution must provide Zheng with all evidence favorable to the defendant. *Brady v. Maryland*, 373 U.S. 83 (1963). Pursuant to *Kyles v. U. S.*, 514 U.S. 419, 115 S.Ct. 1555 (1995), in fulfilling its *Brady* obligations the prosecution has a **duty** to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police. *Kyles*, 514 U.S. at 437, 115 S.Ct. at 1567. Specifically, *Kyles* states:

... the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such [undisclosed favorable] evidence and make disclosure when the point of "reasonable probability" is reached.

This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police.

Id. (emphasis added). Moreover, the prosecution has a duty to obtain and review

1 the applicable governmental agency files relating to its principal witness, and to
2 disclose any material, impeaching evidence. *Carriger v. Stewart*, 132 F.3d 463,
3 479-80 (9th Cir.1997). Thus, *Brady* imposes the duty upon the prosecution to
4 search and disclose material known to or possessed by agencies involved in the
5 investigation or prosecution of defendant, *United States v. Zuno-Arce*, 44 F.3d
6 1420, 1427 (9th Cir.1995) as well as agencies interested in the prosecution,
7
8 *United States v. Wood*, 57 F.3d 733 (9th Cir.1995).

10 *Brady* material includes, but is not limited to impeachment evidence, *United*
11 *States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985),
12 negative exculpatory statements which includes statements that fail to mention
13 defendant, *Jones v. Jago*, 575 F. 1164 (6th Cir. 1978); *United States v. Torres*,
14 719 F.2d 549 (2nd 1985), 2) prior inconsistent statements of a witness, *United*
15 *States v. Peters*, 732 F.2d 1004 (1st Cir. 1984); *Chaney v. Brown*, 730 F.2d 1334
16 (10th Cir. 1984), pecuniary or other interest of a witness, *United States v. Strifler*,
17 851 F.2d 1197 (9th Cir. 1988), bias of a witness, *United States v. Sperling*, 726
18 F.2d 69 (2nd Cir. 1984), favors a witness received from the government, *United*
19 *States v. Burnside*, 824 F. Supp. 1215 (N.D. Ill 1993), promises made a witness
20 by the government, *United States v. Mayer*, 556 F.2d 245 (5th Cir. 1977); *Haber v.*
21 *Wainwright* , 756 F.2d 1520 (11th Cir 1985), bad character of a witness, *United*
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1 *States v. Bernal-Obeso*, 989 F.2d 331 (9th Cir. 1993); *Brumel-Alvarez, supra*.

2 *Brady* material also includes favorable information found in the personnel file of
3 governmental officials called to testify by the prosecution. *United States v.*
4 *Henthorn*, 931 F.2d 29 (9th Cir.1991)
5

6 If the prosecution is uncertain as to whether *Brady* applies to certain
7 information, it should not refuse to disclose the information, but it should submit
8 the information to the trial court for an in camera inspection and evaluation. *See*
9 *United States v. Agurs*, 427 U.S. 97, 106, 96 S.Ct. 2392, 2399, 49 L.Ed.2d 342
10 (1976).
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15 CONCLUSION

16 Zheng is entitled to the requested discovery, Rule 12(b) discovery, FRE
17 Rule 404 notice, and to the disclosure of *Brady* and other exculpatory material.
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20 Law Office of G. Anthony Long

21
22 By: 

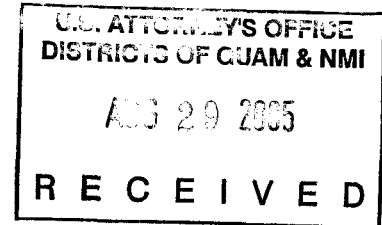
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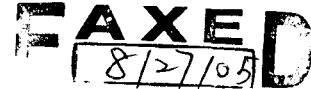
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August 27, 2005

**VIA FAX AND HAND DELIVERY
FAX NO. (670) 236-2945**



Timothy E. Moran, Esq.
Assistant United States Attorney
District of the Northern Mariana Islands
3rd Floor, Horiguchi Building
P.O. Box 500377
Saipan, MP 96950



Re: *USA v. Zheng*, United States District Court Criminal Case No. 05- 00027

Dear Tim:

This letter serves as a formal request for production of FRCrP Rule 12(b)(4) material, FRCrP Rule 16 discovery and *Brady* material.

REQUEST FOR FRCrP RULE 12(b)(4) MATERIAL

Pursuant to Rule 12(b)(4) Zheng requests for notice of all evidence which Zheng may be entitled to discover under Rule 16 which the government intends to use in its evidence in chief at trial. The government must provide the requested notice so that Zheng can determine whether to object or move to suppress any such evidence pursuant to 12(b)(3)(C).

FRCrP RULE 16 DISCOVERY REQUEST

Zheng requests discovery of the following under FRCrP Rule 16:

1. The substance of each and every oral statement made by Zheng prior to, contemporaneous with, and subsequent to her arrest.
2. The identity of each and every informant who provided information to governmental officials or agents concerning the charge against Zheng.

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3. The identity of each and every person who witnessed the alleged acts or actions of Zheng which serve as a basis for the charge against Zheng.
4. Any and all documents which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness or person which relates to any of the charges against Zheng.
5. A copy of any and all statements made by any and all co-conspirators.
6. A copy of the documentation reflecting the chain of custody of any and all physical evidence to be used against Zheng at trial.
7. A copy of any and all written statements taken by government agents obtained from persons whom the government intends to call as witnesses at trial.
10. A copy of each and every criminal conviction of each and every person the government intends to call as a witness at trial.
11. A copy of Zheng's prior criminal record.
12. A copy of each and every written or recorded statement made by Zheng which is related to this case.
13. A copy of all original or rough hand written notes to Zheng or made by governmental officials or agents based upon interviews with each and every person the government interviewed in investigating the case which led to the indictment against Zheng.
14. The identity of each and every alleged co-conspirator of Zheng.
15. A copy of the personnel file of each and every employee and agent of the United States of America that the government intends to call as a witness at trial.
16. A copy of the personnel file of each and every employee and agent of the CNMI that the government intends to call as a witness at trial.

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17. The identify of each and every expert witness the prosecution intends to call as a witness at trial.
18. A summary of the testimony of each expert witness the government intends to call at trial under FRE Rules 702, 703 and 705, which summary shall describe the witnesses' opinions, the bases and the reasons for those opinions, and the witnesses' qualifications.
19. Inspection of any and all physical items which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness or person which relates to any of the charges against Zheng.
20. A copy of each and every photograph or electronic image which is material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness, or person which relates to any of the charges against Zheng.
21. A copy of any and all video recordings which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness, or person which relates to any of the charges against Zheng.
22. A copy of any and all tape recordings which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness, or person which relates to any of the charges against Zheng.
23. A copy of any and all transcripts of tape recordings which are material to the preparation of Zheng's defense or are intended for use by the government as evidence in its case in chief at the trial, or were obtained from or belong to Zheng or any other defendant, co-conspirator, witness, or person which relates to any of the charges against Zheng.

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The above request is not a limitation of the material and information Zheng believes she is entitled to. If it subsequently becomes apparent that Zheng's defense is entitled to or needs other material and information not covered by this request, then additional requests will be made.

BRADY MATERIAL

Zheng is entitled to discover all evidence favorable to the defendant. *Brady v. Maryland*, 373 U.S. 83 (1963). Pursuant to *Kyles v. U. S.*, 514 U.S. 419, 115 S.Ct. 1555 (1995), in fulfilling its *Brady* obligations the prosecution has a **duty** to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police. *Kyles*, 514 U.S. at 437, 115 S.Ct. at 1567. Specifically, *Kyles* states:

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Id. (emphasis added). Moreover, the prosecution has a duty to obtain and review the applicable governmental agency files relating to its principal witness, and to disclose any material, impeaching evidence. *Carriger v. Stewart*, 132 F.3d 463, 479-80 (9th Cir.1997).

Thus, *Brady* imposes the duty upon the prosecution to search and disclose to Zheng material known to or possessed by agencies involved in the investigation or prosecution of Zheng, *United States v. Zuno-Arce*, 44 F.3d 1420, 1427 (9th Cir.1995) as well as agencies interested in the prosecution, *United States v. Wood*, 57 F.3d 733 (9th Cir.1995).

Brady material includes, but is not limited to impeachment evidence, *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985), negative exculpatory statements which includes statements that fail to mention defendant, *Jones v. Jago*, 575 F. 1164 (6th Cir. 1978); *United States v. Torres*, 719 F.2d 549 (2nd 1985), 2) prior inconsistent statements of a witness, *United States v. Peters*, 732 F.2d 1004 (1st Cir. 1984); *Chaney v. Brown*, 730 F.2d 1334 (10th Cir. 1984), pecuniary or other interest of a witness, *United States v. Striffler*, 851 F.2d 1197 (9th Cir. 1988), bias of a witness, *United States v. Sperling*, 726 F.2d 69 (2nd Cir. 1984), favors a witness

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received from the government, *United States v. Burnside*, 824 F. Supp. 1215 (N.D. Ill. 1993), promises made a witness by the government, *United States v. Mayer*, 556 F.2d 245 (5th Cir. 1977); *Haber v. Wainwright*, 756 F.2d 1520 (11th Cir. 1985), bad character of a witness, *United States v. Bernal-Obeso*, 989 F.2d 331 (9th Cir. 1993); *Brumel-Alvarez, supra*. *Brady* material also includes favorable information found in the personnel file of governmental officials called to testify by the prosecution. *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991)

If the prosecution is uncertain as to whether *Brady* applies to certain information, it should not refuse to disclose the information, but it should submit the information to the trial court for an in camera inspection and evaluation. See *United States v. Agurs*, 427 U.S. 97, 106, 96 S.Ct. 2392, 2399, 49 L.Ed.2d 342 (1976).

Zheng hopes to receive the Rule 12(b)(42) notice, Rule 16 discovery, and *Brady* material in a timely fashion so as to avoid having to file pre-trial motions on the matters. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Anthony Long', with a stylized flourish at the end.

G. Anthony Long